IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7730 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7730 of 2001

MR MK VAKHARIA for Petitioners No. 1-2

Mr. Sen, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/10/2001

ORAL JUDGEMENT

Heard learned advocate Mr. M.K. Vakharia for the petitioner and Mr. Sen, learned AGP for the

respondent authorities.

Rule. Service of rule is waived by Mr. Sen, learned AGP for the respondent authorities. On the facts and in the circumstances of the case, the matter is taken up for final hearing today with the consent of the learned advocates for the parties.

Brief facts of the present petition are to the effect that the petitioner No.1 purchased the land bearing revenue survey No. 559 ad measuring 642 sq. mtrs. by registered sale deed dated 13th June, 2000 from Shri Shambhubhai Becharbhai Patel, village Khoraj, district Gandhinagar. The petitioner No.1 also purchased the land bearing revenue survey no. 558 admeasuring about 777 sq. mtrs. and survey No. 505 part admeasuring about 11837 sq. mtrs. i.e. total 12614 sq. mtrs. by registered sale deed dated 25th may, 2000 from Shri Sumanbhai Purshottamdas, Shri Girishbhai Purshottamdas and Smt. Shardaben, widow of Purshottamdas Becharbhai. In addition to the aforesaid lands, the first petitioner has also purchased the land bearing revenue survey no. 504/1 admeasuring about 2210 sq. mtrs. by registered sale deed dated 25th May, 2000 from Vinaben, widow of Dahyabhai Bababhai Patel, Rashmitaben Dahyabhai Patel and minor Vijaykumar Dahyabhai Patel through his guardian Vinaben Patel. Thereafter, entries were made in the revenue records at entry No. 6044, 6043 and 6042 in respect of the said lands. Prior to the said sale of the lands in question, Shri Sumanbhai Purshottamdas Patel, the respondent No.2 herein and others had applied for NA use of the lands for the construction of Multiplex Theater, Restaurant and Hotel. The aforesaid NA Permission was granted by order dated 18.5.2000 by the competent authority under the signature of the Secretary and Taluka development Officer, Taluka Panchayat, Gandhinagar. The petitioner has submitted that the petitioner NO.1 purchased the aforesaid lands with an object to construct the entertainment Complex comprising of Multiplex Theater, Restaurant,Hotel etc. and but for the aforesaid permissions which were obtained for NA Use, the first petitioner would not have purchased the lands in question. Thereafter, the petitioners were informed by the second respondent herein in the last week of August, 2001 that the first respondent has passed an order dated 15.5.2001 cancelling the NA Permission by order dated 18th May, 2000. The petitioners were surprise to note about such order because they were not served with any notice regarding any proceedings for cancellation of the NA Permission dated 18.5.2000 granted by the competent authority. the second respondent had

thereafter furnished a copy of the impugned order passed by the first respondent. on inquiry, the petitioners were informed that the second respondent was served with the show cause notice dated 5.2.2001 by the Joint Secretary Revenue Department (Appeals). It is the specific case of the petitioners that they were never informed regarding the aforesaid show cause notice nor were they communicated with any copy of the said show cause notice. On inquiry, the respondent No.2 has furnished a copy of the said show cause notice to the petitioner wherein in the last paragraph the joint Secretary has issued directions not to put any construction or to transfer the lands in question till the aforesaid show cause notice is decided. However, no intimation whatsoever has been given to the petitioner regarding any such directions. In the aforesaid show cause notice, it has been mentioned that a copy of the show cause notice is given to the District Development Officer, District Panchayat, Gandhinagar for the purpose of implementation of the stay order and for drawing panchanama and for making the report and also for the names and addresses of the persons in possession and such report was to be submitted before the next date of hearing which was fixed on 27.2.2001 as per the said show cause notice. However, the petitioners were not informed by the DDO, District Panchayat, Gandhinagar in that regard nor were they made aware of any panchanama or any report of the competent officers as mentioned while directing notice to the DDO. Under the circumstances, the petitioners have approached this Court by way of this petition.

During the course of hearing, learned advocate Mr. Mehul Vakharia appearing for the petitioner has submitted that the NA Permission was granted by the Taluka Development Officer by order dated 18th May, 2000 in favour of the respondent No.2 and thereafter, the lands in question were purchased by the petitioners from the respondent No.2 and necessary entries in that regard were made in the revenue record and the names of the petitioners were there in the revenue record. However, the joint Secretary (Appeals) has not served any notice to the petitioners before cancelling the NA Permission which was pertaining to the land in question in favour of the respondent NO.2. He has further pointed out that before passing the impugned order cancelling the NA Permission in respect of the land in question, the petitioners were not given any opportunity. He submitted that the land in question was having the NA permission in favour of the respondent No.2 and therefore, it was purchased by the petitioners and, therefore, it was

incumbent upon the respondent No.1 to afford reasonable opportunity of hearing to the petitioner before passing the orders for cancellation of the NA Permission since such orders were adverse to the interest of the petitioners. He has submitted that the impugned order of cancellation of the NA Permission is violative of the principles of natural justice.

Learned Assistant G.P. Mr. Sen appearing for the respondent authorities has submitted that the NA Permission was cancelled by the respondent No.1 on the basis of the fact that certain objections were raised which were not complied in respect of item no.3,4 and 6 and the construction is not carried out by the petitioner in accordance with the plans and permission granted in favour of the respondent No.2 by order dated 18.5.2000 and, therefore, he has submitted that if the petitioner is prepared to comply with the objections raised by the higher authority namely the Joint Secretary, Revenue Department (Appeals), then, the petitioner can approach the Taluka Development Officer by making necessary application with an undertaking to comply with the objections raised by the higher authority while rejecting the NA Permission which was granted in favour of respondent No.2 by order dated 18.5.2000.

Considering these facts and circumstances of the case and also considering the submissions made by the learned advocates for the parties, it is certain that by order dated 18.5.2000, the Taluka Development Officer has granted the NA Permission in favour of the respondent No. 2 in respect of the land in question which was purchased by the petitioners on 26th May, 2000 and necessary entries to that effect were made in the revenue record. It is quite clear that the petitioners have not been given any opportunity by the first respondent before cancelling the NA Permission by order dated 15.5.2001 which was adverse to the right of the petitioner. However, in view of these facts, respondent no.1 by order dated 15.5.2001, has raised certain objections which were not complied with by the petitioner according to the respondents and, therefore, he has cancelled the order of NA Permission granted in favour of the respondent No.2 and, therefore, considering all these peculiar facts and circumstances of the case, according to my opinion, since the petitioners were not heard by the respondent no.1 before passing the impugned order, same is required to be set aside as violative of the principles of natural justice.

Therefore, in such peculiar facts and

circumstances of the case, it is directed to the petitioner to approach the Taluka Development Officer, Gandhinagar by making necessary application in that regard and to comply with the objections raised by the first respondent in his order dated 15.5.2001, if any remaining so far, and to submit such application to the Taluka Development Officer. As and when such an application in the form of representation is received by the TDO, it is directed to the T.D.O. respondent to consider and decide such an application and also to consider as to whether the objections raised by the respondent No.1 have been sufficiently complied with or not by the petitioner and to pass appropriate orders on such representation in accordance with law after affording reasonable opportunity of hearing to the petitioner, as early as possible. In view of these facts, the order passed by the respondent No.1 on 15.5.2001 is hereby quashed and set aside. Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with no order as to costs.

12.10.2001. (H.K.Rathod,J.)

Vyas